

§ 165.4

(d) If the whistleblower submitted original information in writing to the Commission after July 21, 2010 (the date of enactment of the Wall Street Transparency and Accountability Act of 2010) but before the effective date of these rules, the whistleblower will be eligible for an award only in the event that the whistleblower provided the original information to the Commission in a format or manner other than that described in paragraph (a) of this section, the whistleblower submits a completed Form TCR within 120 days of the effective date of these rules and otherwise follows the procedures set forth above in paragraphs (a) and (b) of this section.

§ 165.4 Confidentiality.

(a) *In general.* Section 23(h)(2) of the Commodity Exchange Act requires that the Commission not disclose information that could reasonably be expected to reveal the identity of a whistleblower, except that the Commission may disclose such information in the following circumstances:

(1) When disclosure is required to a defendant or respondent in connection with a public proceeding that the Commission institutes or in another public proceeding that is filed by an authority to which the Commission provides the information, as described below;

(2) When the Commission determines that it is necessary to accomplish the purposes of the Commodity Exchange Act and to protect customers, it may provide whistleblower information to: The Department of Justice; an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction; a registered entity, registered futures association, or a self-regulatory organization; a state attorney general in connection with a criminal investigation; any appropriate state department or agency, acting within the scope of its jurisdiction; or a foreign futures authority; and

(3) The Commission may make disclosures in accordance with the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Anonymous whistleblowers.* A whistleblower may anonymously submit information to the Commission, however, the whistleblower must follow the pro-

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cedures in §165.3(c) for submitting original information anonymously. Such whistleblower who anonymously submits information to the Commission must also follow the procedures in §165.7(c) in submitting to the Commission an application for a whistleblower award.

§ 165.5 Prerequisites to the consideration of an award.

(a) Subject to the eligibility requirements described in these rules, the Commission will pay an award to one or more whistleblowers who:

(1) Provide a voluntary submission to the Commission;

(2) That contains original information; and

(3) That leads to the successful resolution of a covered Commission judicial or administrative action or successful enforcement of a related action; and

(b) In order to be eligible, the whistleblower must:

(1) Have given the Commission original information in the form and manner that the Commission requires in §165.3 and be the original source of information;

(2) Provide the Commission, upon its staff's request, certain additional information, including: explanations and other assistance, in the manner and form that staff may request, in order that the staff may evaluate the use of the information submitted; all additional information in the whistleblower's possession that is related to the subject matter of the whistleblower's submission; and testimony or other evidence acceptable to the staff relating to the whistleblower's eligibility for an award; and

(3) If requested by Commission staff, enter into a confidentiality agreement in a form acceptable to the Commission, including a provision that a violation of the confidentiality agreement may lead to the whistleblower's ineligibility to receive an award.

§ 165.6 Whistleblowers ineligible for an award.

(a) No award under §165.7 shall be made:

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(1) To any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of: the Commission; the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Board of Directors of the Federal Deposit Insurance Corporation; the Director of the Office of Thrift Supervision; the National Credit Union Administration Board; the Securities and Exchange Commission; the Department of Justice; a registered entity; a registered futures association; a self-regulatory organization; or a law enforcement organization;

(2) To any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under § 165.7;

(3) To any whistleblower who submits information to the Commission that is based on the facts underlying the covered judicial or administrative action submitted previously by another whistleblower;

(4) To any whistleblower who acquired the information the whistleblower gave the Commission from any of the individuals described in paragraphs (a)(1), (2), (3) or (6) of this section;

(5) To any whistleblower who, in the whistleblower's submission, the whistleblower's other dealings with the Commission, or the whistleblower's dealings with another authority in connection with a related action, knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or uses any false writing or document, knowing that it contains any false, fictitious, or fraudulent statement or entry, or omitted any material fact, where, in the absence of such fact, other statements or representations made by the whistleblower would be misleading;

(6) To any whistleblower who acquired the original information reported to the Commission as a result of the whistleblower's role as a member, officer or employee of either a foreign regulatory authority or law enforcement organization;

(7) To any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of a foreign regulatory authority or law enforcement organization; or

(8) To any whistleblower who acquired the original information the whistleblower gave the Commission from any other person with the intent to evade any provision of these rules.

(b) Notwithstanding a whistleblower's ineligibility for an award for any reason set forth in paragraph (a) of this section, the whistleblower will remain eligible for the anti-retaliation protections set forth in Section 23(h)(1) of the Commodity Exchange Act.

§ 165.7 Procedures for award applications and Commission award determinations.

(a) Whenever a Commission judicial or administrative action results in monetary sanctions totaling more than \$1,000,000 (*i.e.*, a covered judicial or administrative action) the Commission will publish on the Commission's Web site a "Notice of Covered Action." Such Notice of Covered Action will be published subsequent to the entry of a final judgment or order that alone, or collectively with other judgments or orders previously entered in the Commission covered administrative or judicial action, exceeds \$1,000,000 in monetary sanctions. The Commission will not contact whistleblower claimants directly as to Notices of Covered Actions; prospective claimants should monitor the Commission Web site for such Notices. A whistleblower claimant will have 90 days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred.

(b) To file a claim for a whistleblower award, the whistleblower must file Form WB-APP, *Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act*. The whistleblower must sign this form as the claimant and submit it to the Commission by mail or fax to Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Fax (202) 418-5975. The Form WB-